

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

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NO. 82-2020

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ALYCE HOVSEPIAN,  
*Petitioner,*

v.

GEORGE F. NEFF, INDEPENDENT EXECUTOR  
OF THE ESTATE OF ANNETTE GANO LUMMIS  
AND NORTON BOND, EXECUTOR OF  
THE ESTATE OF RUSH HUGHES,  
*Respondents.*

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**Petition For Writ Of Certiorari To  
The Supreme Court of Texas**

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**BRIEF OF RESPONDENT BOND IN  
OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI**

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Norton Bond, Executor of the  
Estate of Rush Hughes, Deceased*

**QUESTIONS PRESENTED**

Whether this Court should review an alleged federal constitutional question which was not raised at trial, but raised for the first time on Writ of Certiorari to this Court, and whether the decision by the Texas Supreme Court conflicts with federal law.

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*To The United States Supreme Court:*

Respondent, Norton Bond, Executor of the Estate of Rush Hughes, Deceased, in cause number 82-2020 before the Texas Supreme Court respectfully submits this brief in response to the Petitioner's Writ of Certiorari.

## STATEMENT OF THE CASE

The facts of this case are easily confined to the hearing for the Motion for Summary Judgment heard July 13, 1981, in Probate Court No. 2, Harris County, Texas. During this hearing, which Petitioner attended, she contended through counsel that summary judgment should not be granted, for the reason that there was an issue of fact for the jury to decide. Petitioner made no objections to the alleged lack of notice for the Hearing nor any other objections to the Summary Judgment Motion. The trial court upon proper hearing and after reviewing all motions rightfully granted the Summary Judgment Motion on the basis of Texas Law.

## ARGUMENT

Petitioner claims that the summary judgment order used by a Texas Trial Court, in accordance with Rule 166a of the Texas Rules of Civil Procedure, violates her constitutional right to Due Process. *See* Petitioner's Petition for a Writ of Certiorari p. 5-6. Petitioner's alleged constitutional issues were never presented at the trial court nor decided by the Texas Court of Appeals for the Fourteenth Supreme Judicial District of Texas. Thus, the Petitioner may not now, for the first time, claim that the Trial Court's action is repugnant to the federal constitution. *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 185 (1945).

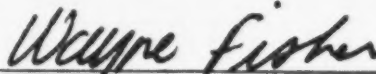
Respondent respectfully contends that Petitioner may not invoke this Court's appellate jurisdiction under 28 U.S.C. § 1257(2) when the alleged constitutional issues have not been raised or preserved in the state court. *See*

*Richmond Newspapers, Inc. v. Virginia*, 100 S.Ct. 2814, 2820 (1980). Furthermore, Petitioner's petition for certiorari under 28 U.S.C. § 1257(3), should not be granted when the state courts have had no opportunity to pass upon the alleged constitutional issues. *Monks v. New Jersey*, 398 U.S. 71 (1970). Petitioner's failure to present their alleged constitutional issues leaves this court without jurisdiction to consider them. *Bailey v. Anderson*, 326 U.S. 203, 206-07 (1945). Therefore, the Court should dismiss this request for certiorari. See *Carter v. Kentucky*, 450 U.S. 288 (1981); *Sandstrom v. Montana*, 442 U.S. 510 (1979).

### CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Writ of Certiorari to this Court be dismissed.

Respectfully submitted,



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**PROOF OF SERVICE**

Pursuant to Rule 28.3 of this Court, attorneys for Norton Bond, Executor of the Estate of Rush Hughes serve the within Brief of Respondent Bond in Opposition to Petition for Writ of Certiorari on the Petitioner, Alyce Hovsepian, and counsel for co-respondent, George F. Neff, Independent Executor of the Estate of Annette Gano Lummis, by placing three copies each thereof in the United States mails, certified mail, return receipt requested, at the main post office building in Houston, Texas on the 13th day of July, 1983 and addressed to:

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